

AMENDED IN ASSEMBLY APRIL 22, 2008

AMENDED IN ASSEMBLY APRIL 10, 2008

AMENDED IN ASSEMBLY APRIL 1, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 2398**

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**Introduced by Assembly Member Nakanishi**

February 21, 2008

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An act to amend Section 2417 of, and to add Section 2259.6 to, the Business and Professions Code, relating to the practice of medicine.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2398, as amended, Nakanishi. Practice of medicine: *cosmetic surgery*: employment of physicians and surgeons.

Existing law, the Medical Practice Act, establishes the Medical Board of California under the Department of Consumer Affairs, which licenses physicians and surgeons and regulates their practice.

Existing law, the Medical Practice Act, requires specified disclosures to patients undergoing procedures involving collagen injections, defined as any substance derived from, or combined with, animal protein. Existing law also requires the board to adopt extraction and postoperative care standards in regard to body liposuction procedures performed by a physician and surgeon outside of a general acute care hospital. Existing law makes a violation of these provisions a misdemeanor.

This bill would require a physician and surgeon who delegates to a registered nurse the performance or administration of any elective cosmetic medical procedure or treatment, as defined, to perform an initial, good faith, and appropriate prior examination of the patient for

whom treatment has been delegated and to provide direct supervision of that procedure or treatment under certain conditions. The bill would prohibit a physician and surgeon from delegating the performance or administration of elective cosmetic medical procedures or treatments to more than 4 separately addressed locations under his or her supervision, which must be located as specified. The bill would provide that a violation of that provision may subject the person or entity that has committed the violation to either a fine of up to \$25,000 per occurrence pursuant to a citation issued by the board or a civil penalty of \$25,000 per occurrence. The bill would also provide that multiple acts by any person or entity in violation of that provision shall be punishable by a fine not to exceed \$25,000 or by imprisonment in a county jail not exceeding 6 months, or by both that fine and imprisonment. The bill would authorize the Attorney General to bring an action to enforce those provisions.

Because multiple violations of those provisions would be a crime, this bill would impose a state-mandated local program.

The Medical Practice Act restricts the employment of licensed physicians and surgeons and podiatrists by a corporation or other artificial legal entity, subject to specified exemptions. Existing law makes it unlawful to knowingly make, or cause to be made, any false or fraudulent claim for payment of a health care benefit, or to aid, abet, solicit, or conspire with any person to do so, and makes a violation of this prohibition a public offense.

This bill would authorize the revocation of the license of a physician and surgeon who practices medicine with, *or serves or is employed as the medical director of*, a business organization *that provides elective cosmetic medical procedures or treatments, as defined*, knowing that it is owned or operated in violation of the prohibition against employment of licensed physicians and surgeons and podiatrists. The bill would also make a business organization *that provides elective cosmetic medical procedures or treatments*, that is owned and operated in violation of the prohibition, and that contracts with or employs a physician and surgeon to facilitate the offer or provision of ~~professional services~~ *those procedures or treatments* that may only be provided by a licensed physician and surgeon, guilty of a violation of the prohibition against knowingly making or causing to be made any false or fraudulent claim for payment of a health care benefit. Because the bill would expand a public offense, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2259.6 is added to the Business and  
2 Professions Code, to read:

3 2259.6. (a) Any physician and surgeon who delegates the  
4 performance or administration of any elective cosmetic medical  
5 procedure or treatment to a registered nurse shall, pursuant to the  
6 requirements of this article, perform an initial, good faith, and  
7 appropriate prior examination of the patient for whom treatment  
8 has been delegated. Subject to the provisions of subdivision (d),  
9 in a physician and surgeon-owned and operated treatment setting,  
10 direct supervision is not required upon delegation to a nurse  
11 practitioner, physician assistant, or registered nurse. In all  
12 circumstances, upon request of the patient, the delegating physician  
13 and surgeon shall afford the patient direct supervision of the  
14 procedure or treatment.

15 (b) Direct supervision shall mean that the physician and surgeon  
16 must be onsite and available for immediate consultation at the time  
17 of performance or administration of the procedure or treatment.

18 (c) As used in this section, “elective cosmetic medical procedure  
19 or treatment” means a medical procedure or treatment that is  
20 performed to alter or reshape normal structures of the body solely  
21 in order to improve appearance.

22 (d) In no event may a physician and surgeon delegate the  
23 performance or administration of elective cosmetic medical  
24 procedures or treatments to more than four separately addressed  
25 locations under his or her supervision, one of which shall be his  
26 or her primary practice location. These sites shall be located within  
27 a radius no greater than that which may be reached within 60  
28 minutes from the physician and surgeon’s primary practice  
29 location. A delegating physician and surgeon shall be available to

1 attend to emergent patient circumstances within a reasonable time,  
2 not to exceed 24 hours from the onset of those circumstances.

3 (e) Notwithstanding any other provision of law, a violation of  
4 this section may subject the person or entity that has committed  
5 the violation to either a fine of up to twenty-five thousand dollars  
6 (\$25,000) per occurrence pursuant to a citation issued by the board  
7 or a civil penalty of twenty-five thousand dollars (\$25,000) per  
8 occurrence. Section 125.9 shall govern the issuance of this citation  
9 and fine except that the fine limitations prescribed in paragraph  
10 (3) of subdivision (b) of Section 125.9 shall not apply to a fine  
11 under this subdivision.

12 (f) Multiple acts by any person or entity in violation of this  
13 section shall be punishable by a fine not to exceed twenty-five  
14 thousand dollars (\$25,000) or by imprisonment in a county jail not  
15 exceeding six months, or by both that fine and imprisonment.

16 (g) The Attorney General may bring an action to enforce this  
17 section and to collect the fines or civil penalties authorized by  
18 subdivision (d) or (e).

19 SEC. 2. Section 2417 of the Business and Professions Code is  
20 amended to read:

21 2417. (a) If the Department of Insurance has evidence that a  
22 business is being operated in violation of this chapter, Part 4  
23 (commencing with Section 13400) of Division 3 of the  
24 Corporations Code, or Chapter 1 (commencing with Section 1200)  
25 of Division 2 of the Health and Safety Code, and that the business  
26 may be in violation of Section 1871.4 of the Insurance Code or  
27 Section 549 or 550 of the Penal Code, then the department shall  
28 report the business, and any physician and surgeon suspected of  
29 knowingly providing medical services for that business relative to  
30 a violation of Section 1871.4 of the Insurance Code or Section 549  
31 or 550 of the Penal Code, to the appropriate regulatory agency.  
32 Upon receiving a report from the Department of Insurance of a  
33 suspected violation, the regulatory agency shall conduct an  
34 investigation. The requirement in subdivision (a) of Section  
35 1872.95 of the Insurance Code for investigations to be conducted  
36 within existing resources does not apply to investigations required  
37 by this section. The Department of Insurance may consult with  
38 the appropriate regulatory department or agency prior to making  
39 its report to that department or agency, and this consultation shall

1 not be deemed to require the department or agency to conduct an  
2 investigation.

3 (b) A physician and surgeon who practices medicine with a  
4 business organization knowing that it is owned or operated in  
5 violation of Section 1871.4 of the Insurance Code, Section 14107  
6 or 14107.2 of the Welfare and Institutions Code, or Section 549  
7 or 550 of the Penal Code shall have his or her license to practice  
8 permanently revoked.

9 (c) A physician and surgeon who practices medicine with a  
10 business organization *that offers to provide, or provides, elective*  
11 *cosmetic medical procedures or treatments*, knowing that it is  
12 owned or operated in violation of Section 2400, may have his or  
13 her license to practice revoked. A physician and surgeon who  
14 contracts to serve as, or otherwise allows himself or herself to be  
15 employed as, the medical director of a business organization that  
16 he or she does not own and that offers to provide or provides  
17 ~~professional services~~ *elective cosmetic medical procedures or*  
18 *treatments* that may only be provided by the holder of a valid  
19 physician's and surgeon's certificate under this chapter shall be  
20 deemed to have knowledge that the business organization is in  
21 violation of Section 2400.

22 (d) A business organization *that offers to provide, or provides,*  
23 *elective cosmetic medical procedures or treatments*, that is owned  
24 or operated in violation of Section 2400, and that contracts with,  
25 or otherwise employs, a physician and surgeon to facilitate its  
26 offers to provide, or the provision of, ~~professional services~~ *elective*  
27 *cosmetic medical procedures or treatments* that may only be  
28 provided by the holder of a valid physician's and surgeon's  
29 certificate is guilty of violating paragraph (6) of subdivision (a)  
30 of Section 550 of the Penal Code.

31 (e) *For purposes of this section, "elective cosmetic medical*  
32 *procedures or treatments" has the same meaning as defined in*  
33 *Section 2259.6.*

34 SEC. 3. No reimbursement is required by this act pursuant to  
35 Section 6 of Article XIII B of the California Constitution because  
36 the only costs that may be incurred by a local agency or school  
37 district will be incurred because this act creates a new crime or  
38 infraction, eliminates a crime or infraction, or changes the penalty  
39 for a crime or infraction, within the meaning of Section 17556 of  
40 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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